DISSENTING VIEWS ON H.R. 3200

OVERVIEW

H.R. 3200 is fundamentally flawed legislation that threatens to simultaneously do irreparable harm to the health delivery system and add mountains of additional debt on our children and grandchildren. Long before those bills come due, though, Americans with health insurance would pay thousands of dollars more per year for coverage, and a host of new taxes on individuals and businesses would further hamper efforts to revive an already struggling economy if this bill becomes law.

The bill violates oft-repeated promises by the President and others that health care reform won't cause people to lose coverage they like, that taxes won't increase on families with income less than $250,000 and that tax rates won't increase above what they were during the 1990s.

The minority was united in opposition to the bill for five main reasons:

1. It was unnecessarily rushed through the Committee without proper understanding or even a reading of the bill by Members;
2. The massive spending and tax increases will damage an already reeling economy;
3. Americans will lose coverage they have and like;
4. The bill gives the government control over Americans' personal health decisions; and
5. Numerous specific improvements we proposed to the bill were all rejected.

I. BILL SHOULD NOT HAVE BEEN RUSHED INTO AND OUT OF COMMITTEE

While we share the majority's goal of improving the nation's health care system, the issues are too important and the decisions too difficult to act in haste and without the full range of information necessary to make such critical policy choices.

We held only one hearing on the discussion draft released in June, however not one of the witnesses spoke knowledgably about all of the provisions in the bill because they were only given a couple of days to digest it.

The measure approved by the Committee was substantially changed from the June draft, with the last round of edits coming out just after midnight on Thursday, July 16th, a few hours before the one-day markup of the legislation that began at 9 a.m. that morning.

This contrasts starkly with the health care reform debate in 1994. That year, the full Ways and Means Committee spent 17 days over six weeks conducting our markup. And that was only after holding a dozen hearings (eight at Subcommittee, four at full Committee) on the bill after its introduction.

already scheduled increase in the top marginal rate to 39.6 percent, would result in an increase in the top Federal income tax rate from 35 percent in 2010 to 45 percent in 2011. Adding in the 2.9-percent Medicare payroll tax and hidden marginal rate increases that operate by phasing out certain deductions, the proposed top Federal rate would jump to about 48 percent, and the average top Federal-State marginal tax rate would be over 52 percent.

While nominally aimed at individuals, the surtax will fall heavily on small businesses, the engine of job creation. According to a Joint Committee on Taxation data projection for 2011, 42 percent of small business income (including the income of sole proprietorships, partnerships, and S corporations) would be subject to the surtax.

Not content to just tax "the wealthy," the bill also imposes large taxes on some of America's poorest families. Effective in 2013, section 401 would impose a tax on individuals without "acceptable coverage", which would hit single filers with incomes as low as $9,350 and married couples with incomes as low as $18,700 (in 2009 dollars). This undermines President Obama's ongoing promise not to raise taxes on families with incomes under $250,000.

Section 442 would prohibit the use of tax-free distributions from Health Savings Accounts (HSAs), Flexible Spending Arrangements (FSAs), and Health Reimbursement Arrangements (HRAs) to purchase medicine or drugs other than prescription drugs or insulin. By imposing this restriction on the estimated 47 to 50 million individuals who currently carry coverage that includes either an HSA, FSA, or HRA, the bill violates another of President Obama's pledges: to allow families to keep the coverage they have and like.

In addition, the Majority would impose several unwise tax increases that bear no relationship to the purpose of the legislation other than to fund the move toward nationalization of health care in this country. These tax increases include a provision that appears to violate our tax treaties with our trading partners; a multi-year delay in rules that would allow worldwide American businesses to calculate their interest expense more accurately; and codification of the economic substance doctrine. The delay of the interest expense allocation rules is especially troubling. By terminating this tax increase at the end of the budget window, the Majority seems to be subtly acknowledging that the revenues generated by the bill will further fail to keep pace with its spending in the long-run.

III. AMERICANS WILL LOSE THE COVERAGE THEY HAVE AND LIKE

Independent analysis demonstrates that under H.R. 3200, two out of three Americans will lose the coverage they currently enjoy because it establishes a government-run health plan. It will, over time, force other coverage out of the market, eventually turning the government option into a federal monopoly.

Services, who oversees the government-run insurance plan described above, creating the potential for a serious conflict of interest that could significantly disadvantage the private coverage that insures more than 170 million Americans today.

Aside from the will of the President, the Commissioner's power would be unchecked. This is extremely troubling given the large scope of responsibility given to the Commissioner. In fact, the Commissioner is so powerful that the title is referenced almost 200 times in H.R. 3200. This government official would have:

- The power to decide which treatments patients could receive and at what cost;
- The power to decide which private plans would be allowed to participate in the Exchange;
- The power to regulate all insurance plans, both in and out of the Exchange;
- The power to determine which employers would be allowed to participate in the Exchange;
- The power to determine how many Americans will be allowed to choose health coverage through the Exchange;
- The power to form and control which physicians and hospitals participate in the government-run plan and in private plan provider networks;
- The power to determine which states are allowed to operate their own Exchange and terminate a previously-approved State Exchange at any time;
- The power to override state laws regarding covered health benefits;
- The power to determine how trillions of taxpayer and employer dollars would be spent within the Exchange;
- The power to determine who qualifies for premium assistance; and
- The power to automatically enroll Americans into the Exchange if they don't have coverage, including potentially forcing these individuals into the government-run plan.

Also troubling is the fact the Secretary of Health and Human Services would decide which prescription drugs are made available in the government plan. Evidence has shown that government officials in other countries have used this power to deny access to needed treatments on the basis of cost.

The bill also contains a new initiative on Comparative Effectiveness Research (CER). This board and its research will significantly harm the patient-doctor relationship if government-run health care uses the research to restrict treatments deemed too expensive. The bill reported by the Committee contains a provision expressly prohibiting the CER board from using its research to make coverage determinations. That may be the biggest of many fig leaves in the bill; in this case, the joke is on us, since the CER board would never make a coverage determination -- it doesn't issue health insurance or pay claims, or have to decide what is covered and what is not.

But those who would make such coverage decisions, like the Centers for Medicare and Medicaid Services (CMS), face no such restrictions on their use of CER data. Peter Orszag, Director of the Office of Management and Budget, has publicly affirmed the

We would like to hope that the Majority's mad dash for an arbitrary finish line, regardless of the consequences, will be called off before real and lasting damage is done to our health care system and our economy. But as we write this, the prognosis is not good.

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